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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD DANIEL PINA,

Defendant and Appellant.

F045309

(Super. Ct. No. BF104750A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Lee P. Felice, Judge.

Robert F. Kane, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Stephen G. Herndon and Maureen A. Daly, Deputy Attorneys General, for Plaintiff and Respondent.

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Following the denial of his motion to suppress evidence (Pen. Code, § 1538.5), appellant Richard Pina pleaded no contest to possession of methamphetamine for

* Before Buckley, Acting P.J., Wiseman, J., and Dawson, J.

purposes of sale (Health & Saf. Code, § 11378). The court suspended imposition of sentence and placed appellant on three years' probation.

On appeal, appellant contends, and the People concede, the court erred in denying appellant's suppression motion. We will reverse and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On January 30, 2004, appellant filed a notice of motion to suppress evidence, in which he asserted that on December 20, 2003,¹ law enforcement officers entered the residence at 1925½ Pacific Street in Bakersfield, where they "made observations, searched the residence and seized items and information," and in doing so, violated appellant's rights under the Fourth Amendment to the United States Constitution.

At the outset of the hearing on the suppression motion, the prosecutor challenged appellant's "standing" to invoke the Fourth Amendment. The court ruled that appellant "had the responsibility to satisfy the Court that he has standing." Thereafter, appellant testified to the following.

There is a house located at 1925 Pacific Street in Bakersfield and a "studio" located behind the house. The address of the studio is 1925½ Pacific Street. The house and the studio are located on "one piece of property."

On December 20, appellant was living in the studio with his mother and two brothers. He had lived there for approximately six months. Appellant did not stay in the studio "every single night," but his clothing and "personal effects" were there.

When appellant "first came there," another person, Yvonne, was living there. Yvonne was "the person who was renting the [studio]." Appellant was "not sure" from whom Yvonne was renting, and he did not know who owned the studio. Appellant believed he "had the right to live there with the permission of Yvonne[.]"

¹ Except as otherwise indicated, further references to dates are to dates in 2003.

Yvonne moved out of the studio approximately two months after appellant moved in. Appellant continued to live there.

The court admitted into evidence the following documents: records of the Kern County tax assessor, indicating that the property at 1925 Pacific Street was owned by Dolores V. Brewer; a death certificate indicating that Dolores V. Preus died on January 31; a declaration executed by attorney Mark A. Kanai in which Kanai stated the following: he is the “Administrator for the Estate of Dorothy V. Preus, aka Dorothy V. Brewer and Delores V. Breezley”; “acting in [his] capacity as such, [he had] custody of the records for 1925 and 1925 ½ Pacific Avenue, Bakersfield, California”; and “[t]here are no records nor lease agreements for said property (nor any Estate property) relating to or with Richard and/or Rene Pina.”²

The prosecutor represented to the court that Rene Pina was appellant’s mother.

The court concluded that appellant lacked standing, stating as follows: “The finding of the Court is [appellant] is not a tenant or a subtenant. There is no evidence of an agreement between the owner and the previous person that paid rent.”

DISCUSSION

Appellant contends the court erred in concluding appellant lacked standing to seek suppression of evidence on Fourth Amendment grounds. The People concede the point, and we agree.

At the outset, we clarify the meaning of the term “standing” in the context of a Fourth-Amendment-based claim. “In *Rakas v. Illinois* (1978) 439 U.S. 128, 140 . . ., the United States Supreme Court abandoned what it considered an artificial examination of defendant’s standing to challenge the legality of a search in favor of focusing on substantive Fourth Amendment law and in particular the cornerstone principle that Fourth

² Appellant contends the court erred in admitting these documents into evidence. We assume without deciding this evidence was properly admitted.

Amendment rights are personal in nature.” (*People v. Dees* (1990) 221 Cal.App.3d 588, 593.) The *Rakas* court clarified “that the inquiry is not properly one of standing but is ‘one involving the substantive question of whether or not the proponent of the motion to suppress has had his own Fourth Amendment rights infringed by the search and seizure which he seeks to challenge.’ ” (*People v. Leonard* (1987) 197 Cal.App.3d 235, 239.) “That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect.” (*Rakas v. Illinois, supra*, 439 U.S. at p. 140.) And whether the search and seizure infringed such an interest “depends on whether the claimant has a legitimate expectation of privacy in the invaded place.” (*People v. Dees, supra*, 221 Cal.App.3d at p. 594.) “A subjective expectation of privacy is legitimate if it is ‘one that society is prepared to recognize as ‘reasonable.’ ” ’ ” (*Minnesota v. Olson* (1990) 495 U.S. 91, 95-96 (*Olson*).)

“[T]he defendant has the burden of proving he or she has a legitimate expectation of privacy in the area or item searched.” (*People v. Dees, supra*, 221 Cal.App.3d at p. 593.)

In *Olson*, the defendant challenged on Fourth Amendment grounds police entry into an apartment where he had spent the previous night as a guest of the occupants of the apartment. The Supreme Court held, “Olson’s status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable.” (*Minnesota v. Olson*, 495 U.S. at pp. 96-97.) “To hold that an overnight guest has a legitimate expectation of privacy in his host’s home merely recognizes the everyday expectations of privacy that we all share.” (*Id.* at p. 98.) Thus, “*Olson*[] establish[es] a virtual per se rule of standing for overnight guests” (*People v. Scott* (1993) 17 Cal.App.4th 405, 413, dis. opn., Johnson, J.)

Here, the uncontroverted evidence established appellant had resided in the studio as a guest of the person who rented the studio. Thus, under *Olson*, appellant had a

legitimate expectation of privacy in the studio. And although there was evidence that appellant's host had moved out after approximately two months, there was no evidence the lessor had taken affirmative steps to terminate the tenancy. (*U.S. v. Dorias* (2001) 241 F.3d 1124, 1129 ["the mere expiration of the rental period, in the absence of affirmative acts of repossession by the lessor, does not automatically end a lessee's expectations of privacy"].) On this record, as appellant contends and the People concede, appellant established a reasonable expectation of privacy in the studio and therefore the court erred in concluding appellant lacked "standing" to invoke the Fourth Amendment in challenging police entry into the studio.

As the People also concede, remand for a full hearing on the merits of appellant's suppression motion is appropriate. "Because the court ruled solely on the issue of standing, we do not speculate whether it implicitly rejected [appellant's] contentions on the merits. [Citation]. [Appellant] had the right to a ruling on all the suppression issues." (*People v. Dachino* (2003) 111 Cal.App.4th 1429, 1433.)

DISPOSITION

The judgment is reversed and the cause remanded with directions to conduct further proceedings consistent with this opinion.